MIMS CAREER SDN BHD
v. ARMAND MIKHAYL YEOH ABDULLAH & ORS

HIGH COURT MALAYA, KUALA LUMPUR
WAN MUHAMMAD AMIN J
[CIVIL SUIT NO: WA-22NCC-833-11-2024]
12 JUNE 2025

Abstract – *An application for a Mareva injunction that attempts to obtain preservation of assets for the enforcement of an existing judgment through the mechanism of a pre-judgment application in a fresh action is procedurally improper and legally untenable. The applicant cannot fashion the application as a pre-judgment Mareva injunction through a fresh action, while in substance seeking relief that is effectively in aid of execution of an existing judgment. Balance of convenience clearly favours a refusal of such application as it suffers from a fundamental conceptual flaw.*

CIVIL PROCEDURE: *Injunction – Mareva injunction – Application for – Whether pre-judgment Mareva injunction in fresh tracing action – Whether application tied to enforcement of award registered as judgment – Whether application attempted to obtain preservation of assets for enforcement of existing judgment through mechanism of pre-judgment application in fresh action – Whether application procedurally improper and legally untenable – Whether there was real risk of asset dissipation – Balance of convenience – Whether weighed against grant of application*

This was the plaintiff's application in encl. 3 for a *Mareva* injunction against the first to fourth defendants ('this application'). The plaintiff obtained an arbitral award ('award') against the first to third defendants ('principal defendants') on 16 March 2020 which was subsequently enforced/registered as a judgment of the court ('enforcement judgment'). Following the registration of the award, the plaintiff sought to enforce the enforcement judgment against the principal defendants through judgment debtor summons ('JDS') proceedings commenced on 26 May 2022. During the course of these JDS proceedings, it was discovered that the principal defendants had transferred assets to the fourth to seventh defendants, with these transfers occurring largely before the award was made in March 2020, and a few occurring after the award but prior to its registration in December 2021. While the overall pattern of transfers involved the fourth to seventh defendants and other recipients, the plaintiff sought to recover assets from all the defendants through this fresh action ('present act'), alleging fraudulent dispositions and constructive trusts, whilst simultaneously seeking *Mareva*

injunctive relief against only the first to fourth defendants. The *Mareva* injunction sought in this application was only against the first to fourth defendants in which the plaintiff sought (i) asset freeze orders preventing the removal or disposal of assets, up to the value of RM16 million, applicable to assets both within and outside Malaysia; (ii) disclosure orders requiring the first to fourth defendants to affirm and file affidavits, disclosing all assets worldwide, including their value, location and details of financial accounts and investment portfolios; and (iii) an order to specifically restrain the fourth defendant's property. The central issue before this court was the true nature of this application. While the plaintiff maintained that this application was a pre-judgment *Mareva* injunction in a fresh tracing action, the defendants contended that it was, in substance, a post-judgment *Mareva* application in aid of execution.

Held (dismissing application with costs):

(1) This application was expressly tied to the enforcement of the award registered as a judgment ('enforcement judgment'). The plaintiff had repeatedly submitted that the principal defendants dissipated assets in order 'to defeat' the award and enforcement judgment. Therefore, the relief sought in this application was to preserve assets for the satisfaction of an existing judgment debt. The plaintiff's current claim was based on constructive trust and conspiracy, which were essentially enforcement mechanisms intended to recover assets connected to the existing judgment, *ie*, the enforcement judgment. This application came after extensive JDS proceedings where the very same asset transfers were discovered and examined. In the present action, the plaintiff was seeking to recover those very assets. Therefore, despite the plaintiff's characterisation of this application as a pre-judgment *Mareva* application, the substance and purpose of the application revealed that it was, in reality a post judgment *Mareva* application presented under the guise of a pre-judgment one. (para 12)

(2) This application suffered from a fundamental conceptual flaw. It attempted to obtain post-judgment relief (preservation of assets for enforcement of an existing judgment through the mechanism of a pre-judgment application in a fresh action). This was procedurally improper and legally untenable. In the case of a post-judgment *Mareva* injunction, the proper procedure required (i) bringing the application before the court in which the judgment was obtained; (ii) satisfying the legal test applicable to a post-judgment *Mareva* injunction application; and (iii) demonstrating that the injunction was sought in aid of execution of the judgment. The plaintiff could not circumvent these requirements by fashioning this application as a pre-judgment *Mareva* injunction

through a fresh action, while in substance seeking relief that was effectively in aid of execution of an existing judgment. On this ground alone, the application may be dismissed. (paras 18-21)

(3) The alleged dissipation of assets occurred some three to six years before this application was filed. The plaintiff had more than two years, from May 2022, when the JDS commenced, to seek this *Mareva* injunction, but chose not to do so. The asset transfers were discovered during the JDS proceedings in 2022, yet this application was only filed over two years later in 2024. This timeline undermined the plaintiff's argument that there was any present or imminent risk of dissipation. The plaintiff had exhausted several avenues to enforce the enforcement judgment including initiating garnishee and JDS proceedings. Dissatisfied with the outcome of these proceedings, the plaintiff then chose to file this fresh action and seek a *Mareva* injunction, which the plaintiff could have applied for in the enforcement judgment court. The delay in bringing this application was significant and substantially weakened the plaintiff's claim of an imminent risk of asset dissipation by the defendants. The materiality of any delay is a crucial consideration in a *Mareva* injunction application and has the potential to vitiate the application. (para 37)

(4) The plaintiff's ground of support of this application, namely, that the principal defendants dissipated assets 'to avoid' the award or the enforcement judgment, was untenable. It did not constitute a pre-emptive act justifying a pre-judgment *Mareva* injunction, but rather appeared to relate to post-award/enforcement judgment conduct aimed at aiding enforcement. This was particularly so given that the alleged asset dissipation all occurred prior to the enforcement judgment. In a pre-judgment *Mareva* application, no judgment had yet been obtained. Accordingly, this application failed to satisfy the requirements set out in *Menk Sdn Bhd v. Joerg Hugo Schmidt.* The plaintiff had failed to demonstrate that there was a 'real' risk of the first to fourth defendants dissipating their assets. (paras 41-44)

(5) A significant concern arose in relation to the overlap between this action and the earlier JDS proceedings, which had already been concluded. In those proceedings, the plaintiff obtained extensive discovery orders. Pursuant to those orders, the principal defendants disclosed bank statements and financial records covering the period from 2017 to 2022. The plaintiff had already pursued various enforcement avenues in respect of the enforcement judgment, including the JDS and garnishee proceedings. This application for a *Mareva* injunction appeared to be an extension of its recovery efforts and gave rise to a multiplicity of proceedings. Accordingly, the balance of convenience weighed against the grant of this application. (paras 45-47)

(6) The plaintiff had not established any real or specific risk of dissipation by the fourth defendant himself. Instead, it relied on a theory of 'liability by association', premised solely on the fact that he was the son of the judgment debtors. Such reasoning was legally insufficient. Furthermore, the fourth defendant voluntarily undertook not to deal with the property pending the outcome of this application, a conduct which was inconsistent with any risk of dissipation. The consequences of granting a *Mareva* injunction against the fourth defendant would be severely disproportionate, as a blanket freeze on all accounts would impair his ability to meet basic living expenses and professional commitments. Hence, the balance of convenience clearly favoured a refusal of this application, in particular against the fourth defendant. (paras 48-52)

Case(s) referred to:

Alor Janggus Soon Seng Trading Sdn Bhd & Ors v. Sey Hoe Sdn Bhd & Ors [1995] 1 CLJ 461 SC ***(refd)***

American Cyanamid Co v. Ethicon Ltd [1975] 1 All ER 504 ***(refd)***

Ang Chee Huat v. Thomas Joseph Engelbach [1995] 2 CLJ 893 CA ***(refd)***

Aspatra Sdn Bhd & Ors v. Bank Bumiputra (M) Bhd & Anor [1987] 2 CLJ 377; [1987] CLJ (Rep) 50 SC ***(refd)***

Biasamas Sdn Bhd & Ors v. Kan Yan Heng & Anor [1998] 4 CLJ 754 CA ***(refd)***

Bumi Armada Navigation Sdn Bhd v. Mirza Marine Sdn Bhd [2015] 5 CLJ 652 HC ***(refd)***

George Pathmanathan Michael Gandhi Nathan v. Portcullis International Ltd & Ors [2017] MLJU 1222 ***(refd)***

Lien Hoe Sawmill Co Sdn Bhd v. Yap Sing Hock & Ors [1992] 2 CLJ 1022; [1992] 2 CLJ (Rep) 727 HC ***(refd)***

Mareva Compania Naviera SA v. International Bulkcarriers SA [1975] 2 Lloyd's (Rep) 509 ***(refd)***

Menk Sdn Bhd v. Joerg Hugo Schmidt [2009] 4 CLJ 795 CA ***(refd)***

Petowa Jaya Sdn Bhd v. Binaan Nasional Sdn Bhd [1987] CLJU 57; [1987] 1 LNS 57 HC ***(refd)***

PJTV Denson (M) Sdn Bhd & Ors v. Roxy (Malaysia) Sdn Bhd [1980] CLJU 55; [1980] 1 LNS 55 FC ***(refd)***

S & F International Ltd v. Trans-Con Engineering Sdn Bhd [1985] 2 CLJ 228; [1985] CLJ Rep 280 FC ***(refd)***

Shim Yen Lin v. Cedric Wong King Ti [2021] 7 CLJ 104 HC ***(refd)***

Tan Sri Dato' (Dr) Rozali Ismail & Ors v. Chua Lay Kim & Ors [2016] 3 CLJ 84 CA ***(refd)***

The Customs And Tax Administration Of The Kingdom Of Denmark v. Saling Capital Ltd & Ors And Other Appeals [2021] 7 CLJ 857 CA ***(refd)***

For the plaintiff - Tan Shang Neng & Ricci Oly Ting; M/s Tan Shang Neng
For the 1st, 2nd, 3rd, 6th & 7th defendants - Mohd Rezan Ezra Muhammad Mosinal, Nathalie Annette Kee Xuan Li & Ivan Teng Jun Hong; M/s Thomas Philip
For the 4th & 5th defendants - Pavitra Pillai & Sara Jailany; M/s M David Morais

Reported by Suhainah Wahiduddin

JUDGMENT

Wan Muhammad Amin Wan Yahya J:

Introduction

[1] This is the plaintiff's application in encl. 3 for a *Mareva* injunction against the first to fourth defendants ("this application" or "encl. 3").

Salient Background Facts

[2] The parties are not in dispute regarding the essential factual background. The plaintiff obtained an arbitral award against the first to third defendants ("principal defendants") on 16 March 2020 ("the award"), which was subsequently enforced/registered as a judgment of the court on 7 December 2021 ("enforcement judgment"). The award has been affirmed through all levels of courts up to the Federal Court.

[3] Following registration of the award, the plaintiff sought to enforce the enforcement judgment against the principal defendants through judgment debtor summons ("JDS") proceedings commenced on 26 May 2022. During the course of these JDS proceedings, it was discovered that the principal defendants had transferred assets to the fourth to seventh defendants, with these transfers occurring largely before the award was made in March 2020, and a few occurring after the award but prior to its registration in December 2021. For instance, property for the fourth defendant was purchased in June 2019, well before the award was made.

[4] While the overall pattern of transfers involved the fourth to seventh defendants and other recipients, the plaintiff seeks to recover assets from all the defendants (first to seventh defendants) through this fresh action (the present act), alleging fraudulent dispositions and constructive trusts, whilst simultaneously seeking *Mareva* injunctive relief against only the first to fourth defendants.

The Plaintiff's Claim

[5] The reliefs the plaintiff seeks against the defendants in this action based on its statement of claim can be summarised as follows:

Against the first defendant:

(i) an account and inquiry regarding the disposition of RM29,266,690.68 from the first defendant's Public Bank account and all gifts, settlements, or inheritance allegedly made between 16 January 2018 and 16 March 2023;

(ii) declarations that recipients of such gifts hold them on constructive trust for the first defendant;

A (iii) orders for immediate payment of monetary gifts to the plaintiff toward settlement of the award (the final award) and judgment sum (the enforcement judgment incorporating the award plus accumulated interest and costs), or alternatively declarations that such gifts be subject to execution.

B Against the second to fifth defendants:

(i) declarations that the transfer of property at No. 25 Jalan 12/17, Petaling Jaya, Selangor to the fifth defendant be declared void for fraudulent disposition and restored to the second defendant, with associated restoration costs borne by the second and/or fifth defendants;

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(ii) alternatively, declarations that the fifth defendant holds the said property on constructive trust for the second defendant;

(iii) declarations that the property be subject to execution for the award and judgment sum.

D Against the second and seventh defendants:

(i) declarations that the transfer of the Pinggiran Golf Property at No. 8 Pinggiran Golf, Saujana Resort, Shah Alam, Selangor to the seventh defendant be declared void for fraudulent disposition and restored to the second defendant, with associated costs borne by

E the second and/or seventh defendants;

(ii) alternatively, declarations that the seventh defendant holds the said property on constructive trust for the second defendant; and

(iii) declarations that the property be subject to execution for the award and judgment sum.

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Against the third defendant:

(i) declarations that the transfer of the Pinggiran Golf Property at No. 8 Pinggiran Golf, Saujana Resort, Shah Alam, Selangor to the seventh defendant be declared void for fraudulent disposition and restored to the second defendant, with associated costs borne by

G the second and/or seventh defendants;

(ii) alternatively, declarations that the seventh defendant holds the said property on constructive trust for the second defendant;

(iii) declarations that the property be subject to execution for the award and judgment sum.

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Against the sixth and seventh defendants:

(i) declarations that the transfer of property at 14 Jalan 12/15, Petaling Jaya, Selangor to the sixth defendant be declared void for fraudulent disposition and restored to the third defendant, with associated costs borne by the third and/or sixth defendants;

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(ii) alternatively, declarations that the sixth defendant holds the said property on constructive trust for the third defendant; and

(iii) declarations that the property be subject to execution for the award and judgment sum.

Against the fourth defendant:

(i) declarations that RM300,000 transferred by the first defendant to the fourth defendant is held on constructive trust for the first defendant;

(ii) orders for immediate payment of the said sum to the plaintiff toward settlement of the award and judgment sum;

(iii) declarations that the property at Parcel No. A1-15-01, Damansara ("the fourth defendant's property") is held on constructive trust for the first defendant;

(iv) feclarations that the fourth defendant's property be subject to execution for the award and judgment sum;

Against the fifth defendant:

(i) feclarations that the property at Parcel No. A1-16-3A, Damansara ("the fifth defendant's property") is held on constructive trust for the first defendant.

(ii) declarations that the fifth defendant's property be subject to execution for the award and judgment sum.

Against the seventh defendant:

(i) declarations that RM7,700,005 transferred by the first defendant to the seventh defendant is held on constructive trust for the first defendant.

(ii) orders for immediate payment of the said sum to the plaintiff toward settlement of the award and judgment sum.

General relief against the first to third defendants:

(i) discovery and/or tracing orders as necessary in aid of the above reliefs;

(ii) general, aggravated and/or exemplary damages.

The Reliefs Sought In This Application

[6] *Mareva* injunction sought in this application is only against the first to fourth defendants in which the plaintiff seeks:

(i) asset freeze orders preventing the removal or disposal of assets, up to the value of RM16 million, applicable to assets both within and outside Malaysia;

A (ii) disclosure orders requiring the first to fourth defendants to affirm and file affidavits disclosing all assets worldwide, including their value, location, and details of financial accounts and investment portfolios, within seven days; and

B (iii) an order to specifically restrain the fourth defendant's property at Parcel No. A1-15-01, Damansara.

The True Nature Of This Application Is A Post-Judgment *Mareva* Injunction

[7] The central issue before this court is the true nature of this application. C While the plaintiff maintains that this application is a pre-judgment *Mareva* injunction in a fresh tracing action, the defendants contend that it is, in substance, a post-judgment *Mareva* application in aid of execution (*George Pathmanathan Michael Gandhi Nathan v. Portcullis International Ltd & Ors* [2017] MLJU 1222; *Shim Yen Lin v. Cedric Wong King Ti* [2021] 7 CLJ 104; D [2021] 11 MLJ 350).

[8] The first to third defendants contend that the relief sought is expressly connected to the enforcement of a separate judgment obtained in a different suit against unrelated parties. This characterisation bears the hallmarks of a post-judgment *Mareva* injunction.

E **[9]** The plaintiff reiterated its position that this application is a pre-judgment *Mareva* injunction application, and it is not in aid of the execution of the award/enforcement judgment, but is based on a new cause of action premised upon constructive trust and conspiracy to defraud.

F **[10]** However, this position is inconsistent with the plaintiff's written submissions in encl. 41 which states, *inter alia*, as follows:

(i) Paragraph 2, where the plaintiff states:

> When the plaintiff sought to enforce the HC Registration Order through garnishee and judgment debtor summons proceedings, cogent G evidence was uncovered demonstrating that D1 to D3 had actively dissipated their assets to others, including the fourth to seventh defendants ("D4" to "D7"), **to frustrate the Final Award**.
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> (emphasis added)

(ii) Paragraph 3, where the plaintiff, with reference to the statement of H claim, states:

> Premised upon the above, the plaintiff filed this action on the grounds of fraudulent disposition and constructive trusteeship against D1 to D7 to recover such assets as was dissipated by D1-D3 **to frustrate the Final award and the HC Registration Order**.
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> I (emphasis added)

(iii) Paragraph 23, where the plaintiff states:

> When the above is taken as a whole, there is cogent *prima facie* evidence that D1-D3 had, contrary to their testimony in the JDS Proceedings, taken steps to fraudulently dispose their assets or provided such assets to third parties, including D4, as constructive trustees **to defeat the Final award**.
>
> (emphasis added)

(iv) Paragraph 26.2, where the plaintiff submits that the fourth defendant's business activities constitute:

> *prima facie* evidence of knowing involvement in D1-D3's scheme **to defeat the Final award**.
>
> (emphasis added)

(v) Paragraph 28, where the plaintiff concludes:

> Finally, we submit that by D1-D3's previous conduct, and by the *prima facie* case against D1-D4 of fraudulent disposition or involvement, engagement and facilitation of D1-D3's dishonest scheme **to defeat the Final award**, an inference can at this point be reasonably drawn of their lack of probity, justifying the inference of a risk of dissipation should encl. 3 not be allowed.
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> (emphasis added)

[11] The above statements are consistent with the plaintiff's statement of claim and affidavits filed in support of encl. 3.

[12] Therefore, despite the plaintiff's characterisation of this application as a pre-judgment *Mareva* application, I find that the substance and purpose of the application reveal that it is, in reality, a post-judgment *Mareva* application presented under the guise of a pre-judgment one. The following, *inter alia*, supports this conclusion:

(i) this application is expressly tied to enforcement of the award registered as a judgment on 7 December 2021 (enforcement judgment);

(ii) as highlighted earlier, the plaintiff has repeatedly submitted that the principal defendants dissipated assets in order "to defeat' the award and enforcement judgment;

(iii) therefore, the relief sought in this application is to preserve assets for satisfaction of an existing judgment debt;

(iv) the plaintiff's current claim is based on constructive trust and conspiracy, which are essentially enforcement mechanisms intended to recover assets connected to the existing judgment, *ie*, the enforcement judgment. To put it simply, the constructive trust claim arises from the allegation that the principal defendants dissipated assets in order to avoid satisfaction of the award, which was subsequently registered;

A (v) this application comes after extensive JDS proceedings where the very same asset transfers were discovered and examined; and

(vi) in the present action the plaintiff is seeking to recover those very assets.

Post-Judgment Mareva Injunction Requirements

B **[13]** For the grant of a post-judgment *Mareva* injunction, the established test requires the plaintiff to demonstrate that:

(i) there is a real risk of the debtor dissipating assets with intention to deprive the creditor of satisfaction of the judgment debt;

C (ii) the injunction must act as an aid to execution.
(*George Pathmanathan* (*supra*); *Shim Yen Lin* (*supra*))

Pre-Judgment Mareva Injunction Requirements

[14] For the grant of pre-judgment *Mareva* injunctions, the plaintiff must
D satisfy the following three conjunctive criteria:

(i) that the plaintiff has a good arguable case on the merits;

(ii) that the defendant has assets within the jurisdiction; and

(iii) that there is a real risk that the defendant will dissipate or remove those
E assets to frustrate the satisfaction of any judgment.

(*Mareva Compania Naviera SA v. International Bulkcarriers SA* [1975] 2 Lloyd's (Rep) 509 and *Aspatra Sdn Bhd & Ors v. Bank Bumiputra (M) Bhd & Anor* [1987] 2 CLJ 377; [1987] CLJ (Rep) 50; [1988] 1 MLJ 97)

F **[15]** As can be seen from the above, there are significant differences in the criteria for post-judgment and pre-judgment *Mareva* injunctions, which I will address below.

Key Distinctions Between A Post-Judgment Mareva And Pre-Judgment Mareva Injunction

G **[16]** I have summarised the key distinctions between post-judgment and pre-judgment *Mareva* injunctions in the comparison table below:

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No.	Aspect	Pre-Judgment	Post-Judgment
1.	Purpose	To preserve the defendant's assets pending trial to protect potential future judgment	To Aid enforcement of existing established judgment where claim already proven
2.	Legal Standard	General risk of asset dissipation or removal to frustrate any judgment (*Mareva Compania (supra))*	Intentional dissipation with specific intent to deprive creditor of judgment satisfaction (*Hitachi Leasing (Singapore) Pte Ltd v. Vincent Ambrose And Another* [2001] 1 SLR(R) 762); *Jtrust Asia Pte Ltd v. Group Lease Holdings Pte Ltd And Others* [2021] SGCA 26
3.	Threshold	Balance of convenience between parties' respective hardships (*Bumi Armada Navigation Sdn Bhd v. Mirza Marine Sdn Bhd* [2015] MLJU 953)	Necessity - injunction must be essential for enforcement, not merely convenient *(Jtrust Asia* (*supra*))
4.	Court where the application is made	Any competent court with jurisdiction over the matter where the action is filed and pending trial	Court where original judgment was obtained (*Asma Baizura bt Mohamad Omar & Anor v. Pengiran Dato' Awang Daud bin Awang Putra & Anor* [2023] MLJU 474)
5.	Procedural origin 11	Fresh standalone application in pending litigation	As an extension of pre-judgment *Mareva* injunction granted before trial (*Orwell Steel (Erection and Fabrication) Ltd v. Asphalt and Tarmac (UK) Ltd* [1984] 1 WLR 1097; *Dopag Dosiertechnik und Pneumatik AG v. Gamel Nasir Taib & Ors* [2017] 10 MLJ 31; *Sun Electric Pte Ltd v. Menrva Solutions Pte Ltd* [2020] SGHC 18)

6.	Timing of the application	Before final judgment while claim is still being determined	After final judgment has been obtained but before/during execution
7.	"Good Arguable Case" Test	"more than being barely capable of serious argument, but not necessarily one that the judge believes has got more than a fifty per cent chance of success" (*S & F International Limited v. Trans*-Con *Engineering Sdn Bhd* [1985] 1 MLJ 62; [1985] 2 CLJ 228; *Biasamas* (*supra*))	Not applicable - liability has been established and judgment obtained
8.	Available Alternatives	Limited - main protection is the potential injunction	Multiple enforcement mechanisms available (JDS, writs of execution, *etc.*)
9.	Urgency Requirement	Must demonstrate current risk of asset dissipation requiring immediate protection	Must show current necessity despite existing enforcement options

[17] The essential difference between pre-judgment and post-judgment *Mareva* injunctions can be summarised as follows:

(i) pre-judgment *Mareva* injunctions are to preserve a defendant's assets pending the determination of a claim, while post-judgment injunctions assist in enforcing an established judgment; and

(ii) the former protects potential rights (if the applicant obtains judgment in his favour), while the latter enforces established rights, but only when conventional enforcement mechanisms are insufficient and the injunction is necessary to prevent deliberate frustration of the judgment.

The Fundamental Flaw In This Application

[18] Based on the above, this application suffers from a fundamental conceptual flaw. It attempts to obtain post-judgment relief (preservation of assets for enforcement of an existing judgment) through the mechanism of a pre-judgment application in a fresh action. This is procedurally improper and legally untenable.

[19] In the case of a post-judgment *Mareva* injunction, the proper procedure requires: A

(i) bringing the application before the court in which the judgment was obtained;

(ii) satisfying the legal test applicable to a post-judgment *Mareva* injunction application; and B

(iii) demonstrating that the injunction is sought in aid of execution of the judgment.

[20] The plaintiff cannot circumvent these requirements by fashioning this application as a pre-judgment *Mareva* injunction through a fresh action, while in substance seeking relief that is effectively in aid of execution of an existing judgment. C

[21] On this ground alone, the application may be dismissed. However, for the sake of completeness, I will address the requirements that must be satisfied for the granting of a pre-judgment *Mareva* injunction, as asserted by the plaintiff . D

Pre-judgment *Mareva* Injunction: Whether The Requirements Are Met

[22] Even if this application is accepted as a pre-judgment *Mareva* application, as asserted by the plaintiff, the issue is whether the necessary requirements for such an injunction have been satisfied. E

Good Arguable Case Analysis

[23] The plaintiff relies on the following cases to support its claim and cause of action against the defendants: F

(i) *PJTV Denson (M) Sdn Bhd & Ors v. Roxy (Malaysia) Sdn Bhd* [1980] CLJU 55; [1980] 1 LNS 55; [1980] 2 MLJ 136; and

(ii) *Tan Sri Dato' (Dr) Rozali Ismail & Ors v. Chua Lay Kim & Ors* [2016] 3 CLJ 84. G

[24] The main similarity between the present action, *PJTV* (*supra*), and *Tan Sri Dato' (Dr) Rozali* (*supra*) is that they all involve the filing of a fresh suit arising from property transfers by the defendants, based on allegations that the transfers were made with the intention of defeating the respective plaintiffs' claims. H

[25] The main difference between the present case and *PJTV* (*supra*) and *Tan Sri Dato' (Dr) Rozali* (*supra*) is that, unlike in those two cases, where the fraudulent transfers occurred solely after judgment was obtained, the alleged asset dispositions in the present case took place both during the arbitration proceedings (2018 to 2019) and after the award was delivered (December 2020 to February 2021). Further, the alleged disposition of assets in present case all occurred before the enforcement judgment. I

[26] A further difference is that in the present case, the plaintiff conducted extensive enforcement proceedings (including garnishee proceedings and JDS) in the original court where the enforcement judgment was granted, and is now seeking a *Mareva* injunction in a fresh suit. This is unlike *PJTV* (*supra*) and *Tan Sri Dato' (Dr) Rozali* (*supra*), where no such enforcement proceedings were initiated in the original courts, nor were any subsequent *Mareva* injunction applications filed.

[27] Despite these differences, I generally accept that the plaintiff's pleaded case satisfies the criteria of a "good arguable case" in that it is "more than being barely capable of serious argument, but not necessarily one that the judge believes has got more than a fifty per cent chance of success" (*S&F International* (*supra*)).

[28] The threshold to establish a good arguable case is not very high and the plaintiff only needs to demonstrate that they have a fair chance of success and in this regard, they do not need to show that their case is so strong as to warrant summary judgment or that he has a strong *prima facie* case (*Biasamas* (*supra*)).

Assets Within Jurisdiction

[29] The first, second, third and fourth defendants, being Malaysian citizens, have not disputed that they have assets within the jurisdiction.

[30] In this regard the Court of Appeal in *The Customs And Tax Administration Of The Kingdom Of Denmark v. Saling Capital Ltd & Ors And Other Appeals* [2021] 7 CLJ 857; [2022] 1 MLJ 316, held as follows:

> [31] From the evidence adduced, we are of the considered view that there is clear evidence to show that **the *Mareva* respondents are domiciled and/or have business dealings within Malaysia** and are therefore **likely to have assets within the jurisdiction**.
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> (emphasis added)

(see also *Lien Hoe Sawmill Co Sdn Bhd v. Yap Sing Hock & Ors* [1992] 2 CLJ 1022; [1992] 2 CLJ (Rep) 727 at pp. 731 and 732)

[31] Therefore, this requirement has been satisfied.

Risk Of Dissipation

[32] The risk of dissipation is arguably the most significant factor in a *Mareva* injunction application. It forms the central basis upon which the plaintiff seeks this injunction.

[33] In support of its contention that there is a real risk of asset dissipation by the first to fourth defendants, the plaintiff asserts the following:

(i) the plaintiff discovered alleged fraudulent asset dispositions by the principal defendants following their discovery disclosures in the JDS proceedings on 10 June 2024 and 28 August 2024;

(ii) the dissipation of assets occurred both prior to and following the award, involving movement of assets from 2018 to 2021 (before the enforcement judgment); and

(iii) through this application, the plaintiff seeks to prevent further dissipation of assets aimed at evading satisfaction of the award and the enforcement judgment.

[34] The chronology of the alleged asset dissipation is as follows:

(i) before the award: between 15 March 2018 and 7 August 2020, involving 13 transactions; and

(ii) after the award: between 26 November 2020 and 13 January 2021, involving three transactions.

[35] Importantly, there were no dissipation of assets after the award was registered on 7 December 2021.

[36] The following timelines are material to my analysis of the risk of asset dissipation:

(i) 15.3.2018 - 13.1.2021 - transfers took place.

(ii) 7.12.2021 - award registered as judgment (enforcement judgment).

(iii) 17.12.2021 - plaintiff demanded payment of judgment sum.

(iv) 14.2.2022 - garnishee applications filed (against the first defendant's Public Bank accounts and the third defendant's HSBC accounts).

(v) 29.3.2022 - additional garnishee application (against the third defendant's HSBC accounts).

(vi) 26.4.2022 - garnishee order absolute obtained against the first defendant.

(vii) 26.5.2022 - garnishee order absolute obtained against the third defendant.

(viii) 26.5.2022 - JDS proceedings commenced.

(ix) 22.8.2022 - first to third defendants' first examination before the Senior Assistant Registrar.

(x) 29.9.2022 - continued examination and discovery orders granted.

(xi) 16.3.2023 - instalment payment orders granted.

(xii) 10.6.2024 & 28.8.2024 - production of financial documents by the first to third defendants in compliance with the orders made during the JDS proceedings.

(xiii) 23.11.2024 - This action and this application were filed.

[37] The foregoing chronology is crucial to my analysis, as it demonstrates the following:

(i) significant delay: the alleged dissipation of assets occurred some three to six years before this application was filed. Further, the plaintiff had more than two years, from May 2022 when the JDS commenced, to seek this *Mareva* injunction, but chose not to do so;

(ii) knowledge of transfers: the asset transfers were discovered during the JDS proceedings in 2022, yet this application was only filed over two years later in 2024;

(iii) lack of urgency: this timeline undermines the plaintiff's argument that there is any present or imminent risk of dissipation; and

(iv) abuse of process concerns: the plaintiff has exhausted several avenues to enforce the enforcement judgment, including initiating garnishee and JDS proceedings. It appears that, dissatisfied with the outcomes of these proceedings, the plaintiff then chose to file this fresh action and seek a *Mareva* injunction, which the plaintiff could have applied for in the enforcement judgment court.

[38] Having regard to the circumstances of the present matter, the delay in bringing this application is significant (material) and substantially weakens the plaintiff's claim of an imminent risk of asset dissipation by the defendants. The materiality of any delay is a crucial consideration in a *Mareva* injunction application and has the potential to vitiate the application (*Alor Janggus Soon Seng Trading Sdn Bhd & Ors v. Sey Hoe Sdn Bhd & Ors* [1995] 1 CLJ 461; [1995] 1 MLJ 241; *The Customs And Tax Administration Of The Kingdom of Denmark* (*supra*)).

[39] The plaintiff contends that there is a lack of probity on the part of the first to third defendants, principally based on the allegation that the asset dissipation occurred to avoid the award and the enforcement judgment. However, this argument conflates two distinct issues: the current application is presented as a pre-judgment *Mareva* injunction, whereas such an allegation is typically relevant only in a post-judgment *Mareva* injunction context. Regardless of the approach, the plaintiff is hindered by this fundamental flaw in the application. I have addressed this earlier in this judgment.

[40] In this regard, the following passage from the Court of Appeal decision in *Menk Sdn Bhd v. Joerg Hugo Schmidt* [2009] 4 CLJ 795; [2009] 3 MLJ 205 clearly sets out the requirements that a plaintiff or applicant must satisfy for the grant of a pre-judgment *Mareva* injunction:

> [31] Inexplicably, apart from the above excerpt, nothing was discussed about the danger of disposal of the assets defeating a judgment, a requirement that must be established as laid down by the *Aspatra Sdn Bhd* case. It is trite law that in order to succeed in a *Mareva* injunction

> application, **dissipation of assets *per se* is incomplete unless** the applicant **also successfully establishes** the fact that the dissipation **are preemptive acts** that would lead to **an intentional stultifying** of any **judgment** that **may be obtained. The two ingredients must go hand in hand**.
>
> (emphasis added)

[41] Therefore, the plaintiff's ground in support of this application, namely, that the principal defendants dissipated assets "to avoid" the award or the enforcement judgment, is untenable. It does not constitute a pre-emptive act justifying a pre-judgment *Mareva* injunction, but rather appears to relate to post-award/enforcement judgment conduct aimed at aiding enforcement. This is particularly so given that the alleged asset dissipation all occurred prior to the enforcement judgment.

[42] Pre-judgment *Mareva* application, no judgment has yet been obtained. Accordingly, this application fails to satisfy the requirements set out in *Menk* (*supra*).

[43] As held in *Petowa Jaya Sdn Bhd v. Binaan Nasional Sdn Bhd* [1987] CLJU 57; [1987] 1 LNS 57; [1988] 2 MLJ 261 and *Ang Chee Huat v. Thomas Joseph Engelbach* [1995] 2 CLJ 893; [1995] 2 MLJ 83:

> The risk of dissipation was **not just a mere possibility**, but **almost a certainty**
>
> (emphasis added)

[44] In the circumstances, I find that the plaintiff has failed to demonstrate that there is a "real" risk of the first to fourth defendants dissipating their assets (*S&F International* (*supra*); *Itramas Technology Sdn Bhd v. Maju Holdings Sdn Bhd & Ors* [2020] CLJU 1487; [2020] 1 LNS 1487; [2020] MLJU 1663); [2021] MLRHU 559).

Balance Of Convenience

[45] A significant concern arises in relation to the overlap between this action and the earlier JDS proceedings, which have already been concluded. In those proceedings, the plaintiff obtained extensive discovery orders, which the Court of Appeal specifically observed would "invariably involve some element of tracing." Pursuant to those orders, the principal defendants disclosed bank statements and financial records covering the period from 2017 to 2022.

[46] The plaintiff has already pursued various enforcement avenues in respect of the enforcement judgment, including the JDS and garnishee proceedings. This application for a *Mareva* injunction appears to be an extension of its recovery efforts and gives rise to a multiplicity of proceedings.

[47] Accordingly, the balance of convenience weighs against the grant of this application (*Bumi Armada* (*supra*)).

The Fourth Defendant

[48] The fourth defendant is, at most, a passive recipient, not an active dissipator. The plaintiff seeks to impose an asset freeze on an individual who owes no legal obligation to the plaintiff and against whom no allegation of intention to dissipate assets has been made.

[49] The plaintiff has not established any real or specific risk of dissipation by the fourth defendant himself. Instead, it relies on a theory of "liability by association", premised solely on the fact that he is the son of the judgment debtors. Such reasoning is legally insufficient.

[50] Furthermore, the fourth defendant voluntarily undertook not to deal with the property pending the outcome of this application, a conduct which is inconsistent with any risk of dissipation. It is also relevant that he has held the property for a considerable period without any indication or attempt to dispose of it.

[51] The consequences of granting a *Mareva* injunction against the fourth defendant would be severely disproportionate, particularly given that he is a 27-year-old junior professional:

(i) a blanket freeze on all accounts would impair his ability to meet basic living expenses and professional commitments;

(ii) the reputational stigma attached to a *Mareva* injunction would jeopardise his standing within his profession and compromise his personal integrity; and

(iii) the requirement for worldwide asset disclosure would amount to an unjustified invasion of privacy.

[52] For some one at the outset of his career, the harms outlined above would be enduring and difficult to remedy. Hence, the balance of convenience clearly favours a refusal of this application, in particular against the fourth defendant.

Conclusion

[53] In addition to the grounds already stated, I observed from the oral submissions during the hearing of this application that the plaintiff's primary focus is on the property held by the fourth defendant. However, with respect, a *Mareva* injunction is not the appropriate remedy against the fourth defendant for the reasons I have previously outlined. It appears to me that the plaintiff is, in effect, seeking an interlocutory prohibitory injunction under the

principles established in *American Cyanamid Co v. Ethicon Ltd* [1975] 1 All ER 504. Such an injunction requires the plaintiff to demonstrate, among other things, a serious question to be tried, the adequacy of damages as a remedy, and the balance of convenience. Notably, the requirement to show adequacy of damages does not apply in the context of a *Mareva* injunction application.

[54] For the reasons stated, this application is dismissed with costs in favour of the first, second, third and fourth defendants.